

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298



April 20, 2005

Agenda ID #4517
Ratesetting

TO: PARTIES OF RECORD IN APPLICATION 00-11-038 ET AL.

This is the draft decision of Administrative Law Judge (ALJ) Allen. It will not appear on the Commission's agenda for at least 30 days after the date it is mailed. The Commission may act then, or it may postpone action until later.

When the Commission acts on the draft decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the draft decision as provided in Article 19 of the Commission's "Rules of Practice and Procedure." These rules are accessible on the Commission's website at <http://www.cpuc.ca.gov>. Pursuant to Rule 77.3 opening comments shall not exceed 15 pages. Finally, comments must be served separately on the ALJ and the assigned Commissioner, and for that purpose I suggest hand delivery, overnight mail, or other expeditious method of service.

/s/ ANGELA K. MINKIN

Angela K. Minkin, Chief
Administrative Law Judge

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Attachment

Decision **DRAFT DECISION OF ALJ ALLEN** (Mailed 4/20/05)**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of Southern California Edison Company (E 3338-E) for Authority to Institute a Rate Stabilization Plan with a Rate Increase and End of Rate Freeze Tariffs.

Application 00-11-038
(Filed November 16, 2000)

Emergency Application of Pacific Gas and Electric Company to Adopt a Rate Stabilization Plan (U 39 E).

Application 00-11-056
(Filed November 22, 2000)

Petition of THE UTILITY REFORM NETWORK for Modification of Resolution E-3527.

Application 00-10-028
(Filed October 17, 2000)

**ORDER DENYING PETITION FOR
MODIFICATION OF DECISION 04-12-014****I. Summary**

This decision denies San Diego Gas & Electric Company's (SDG&E) Petition for Modification of Decision (D.) 04-12-014, which adopted a permanent methodology for allocating the Department of Water Resources' (DWR) annual revenue requirement.

II. Discussion

SDG&E makes several arguments in its petition for modification of D.04-12-014. SDG&E criticizes the result of the decision, contending that the adopted methodology results in a cost shift to SDG&E customers, and that the

methodology itself is flawed. SDG&E also criticizes the process by which the decision was reached. SDG&E's petition is opposed by Pacific Gas & Electric Company (PG&E), Southern California Edison Company (SCE), and The Utility Reform Network (TURN), who collectively refer to themselves as "The Settling Parties."

None of SDG&E's arguments are new. SDG&E vigorously litigated the issue of the rate impacts on SDG&E's customers that would result from the adopted allocation methodology, and the Commission considered those rate impacts. The potential flaws in the methodology ultimately adopted by the Commission in D.04-12-014 were identified by SDG&E, and were also considered by the Commission. In short, the Commission heard SDG&E's arguments, considered them, and rejected them in reaching its decision.

SDG&E's criticisms of the process by which the Commission made its decision were previously addressed in D.05-01-036, in which the Commission granted partial rehearing of D.04-12-014. In that decision, the Commission found that some of SDG&E's criticisms had merit, and accordingly granted rehearing. The remainder of SDG&E's procedural criticisms were rejected. Again, the Commission has previously heard, considered, and ruled upon SDG&E's procedural arguments.

The Settling Parties oppose SDG&E's petition for modification, and defend both the substance and process of D.04-12-014. The Settling Parties argue that the Commission's grant of rehearing provides SDG&E "a complete opportunity" to argue its points regarding the above-market cost component of DWRs contracts, and no further relief is necessary or appropriate. (Response of The Settling Parties, p. 3.) The Settling Parties also point out that conditions the Commission has previously identified as necessary for granting rehearing have not been shown – e.g., extrinsic fraud, significant new facts or circumstances, a

material change in conditions, or a basic misconception of law or fact. (*Id.*, pp. 10-11, citing D.74141, D.97-04-049, and D.92058.)

The Commission has no interest in re-litigating this proceeding. SDG&E has made these same arguments before, and we have considered them before (some of them more than once). To the extent the arguments have merit, we have granted rehearing, and SDG&E will have another opportunity to make its case on rehearing. On those issues, granting SDG&E's petition to modify would be duplicative and unnecessary given the relief we have already provided by granting rehearing. The remainder of SDG&E's arguments have been expressly rejected at least once, and their mere repetition does not provide a substantial enough basis for us to change the allocation methodology we adopted in D.04-12-014.

III. Comments on Draft Decision

The draft decision of the Administrative Law Judge was mailed to the parties in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.7 of the Commission's Rules of Practice and Procedure. Comments were received from _____. Reply comments were received from _____.

Finding of Fact

SDG&E's Petition to Modify did not raise any issues that had not previously been considered by the Commission in its deliberations leading to D.04-12-014 and D.05-01-036.

Conclusion of Law

There is neither a basis for nor a need to modify D.04-12-014.

IT IS ORDERED that the Petition of San Diego Gas & Electric Company for Modification of Decision 04-12-014 is denied.

This order is effective today.

Dated _____, at San Francisco, California.